

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

GARY POCHE (#120409)

CIVIL ACTION

VERSUS

POSTMISTRESS JEAN RODRIGUEZ, ET AL.

NO. 05-0974-FJP-DLD

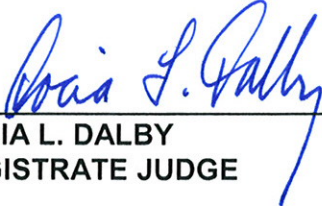
NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the United States District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have ten (10) days after being served with the attached Report to file written objections to the proposed findings of fact, conclusions of law and recommendations therein. Failure to file written objections to the proposed findings, conclusions, and recommendations within 10 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions of the Magistrate Judge which have been accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Baton Rouge, Louisiana, this 29<sup>th</sup> day of January, 2009.

  
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DOCIA L. DALBY  
MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

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**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On August 27, 2008, this Court entered an Order, rec.doc.no. 49, advising the plaintiff that he must, within thirty (30) days of the date of the Order, contact the United States Marshal's Office, ascertain the amount of the advance payment which must be made for service of process, and make such payment to the Marshal's Office so that service may be made. The plaintiff was specifically advised that "failure to comply ... within the time allowed shall result in the dismissal of this proceeding without further notice from the Court for failure ... to timely effect service upon the defendants." Id.

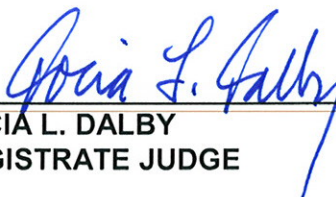
Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, "[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice ... or direct that service be effected within a specified time ...." In the instant case, inasmuch as the Court has denied the plaintiff's request for in forma pauperis status, the plaintiff is himself responsible for paying the fees associated with effecting service upon the defendants. Upon his failure to make the required payment, the Court has entered the above-referenced Order directing him to pay the required fees to the United States Marshal's Office within thirty (30) days. The record reflects that, despite notice and an opportunity to make such payment, the plaintiff has not complied with the Court's Order. It is therefore appropriate that the plaintiff's action be dismissed, without prejudice, as a result of his failure to timely effect service as mandated by Rule

4 of the Federal Rules of Civil Procedure.

RECOMMENDATION

It is recommended that the plaintiff's action be dismissed, without prejudice, as a result of his failure to effect timely service upon the defendants as mandated by Rule 4 of the Federal Rules of Civil Procedure.

Baton Rouge, Louisiana, this 29<sup>th</sup> day of January, 2009.

  
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DOCIA L. DALBY  
MAGISTRATE JUDGE